Miller case could have been decided the other way upon faultless logic and well defined legal principles, but in both cases the courts have looked more at modern conditions and the needs which have arisen as exemplified by a contrary course of procedure, and have made this the basis of their decisions. This in itself refutes the criticisms urged against the law that it is backward in adopting new ideas of social betterment, and that it applies eighteenth century principles to twentieth century conditions. Under the conditions which existed at the time *Lochner* v. *New York* and *People* v. *Williams* were decided, the decisions could be justified. Certainly, today, it can not be said that the judicial mind has been slow in changing its attitude for the more modern and better view. M. K. B.

CONDITIONS PRECEDENT TO STOCKHOLDER'S SUIT IN FEDERAL COURTS.—A stockholder cannot maintain a suit in equity in his own right based on acts of the defendant alleged to have caused injury to him by injuring the property or business of the corporation, thereby depreciating the value of his stock, the right of such action being in the corporation (*Kelly* v. *Mississippi River Coaling Co.*, 175 Fed. 482) unless he shows compliance with the federal equity rule (*Gage* v. *Riverside Trust Co.*, 156 Fed. 1002) for the equity rule is jurisdictional in character. (*City of Chicago* v. *Mills,* 204 U. S. 321.).

The former equity rule (Rule 95) provided not only that the bill must allege "that the suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance," but that "it must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and if necessary, of the shareholders, and the cause of his failure to obtain such action." The new rule (Rule 27, 198 Fed. xxv.) adds to this provision the words—"or the reasons for not making such effort."

The courts have interpreted these rules rather strictly and, with but one exception, have required almost a literal compliance therewith. In *Macon D. & S. R. Co.* v. *Shailer,* 141 Fed. 585, the court held that where the stockholder sought to set aside a sale of property by the corporation upon the ground of fraud, he must not only set out in his bill the fraud on the part of the president and directors but also the efforts made by him and the cause of his failure to secure action by the corporation. And in *Poor* v. *Iowa Central Ry.,* 155 Fed. 226, it was held that merely alleging a demand upon the directors and their refusal was not sufficient but that the manner and reason for their refusal must also be disclosed in the bill. To the same effect are: *Howes* v. *Oakland,* 104 U. S. 450, *Corbus* v. *Gold Mining Co.,* 187 U. S. 455.

But where the stockholder's bill alleges demands upon the directors of a corporation to refuse to comply with a statute alleged to be unconstitutional and that such demands were refused because of the severe penalties imposed upon such officers for failure to obey requirements of the statute, it amounts to a sufficient compliance with the provisions of the rule. *Perkins* v. *Northern Pacific Ry.,* 155 Fed. 445, *Ex Parte Young,* 209 U. S. 123.

Under the old equity rule the courts recognized the exception that where the allegations of the bill negatived collusion and set up facts showing that any demand would have been futile, they were sufficient to satisfy the rule. So in *Burrows* v. *Interborough Metropolitan Co.*, 156 Fed. 389, a bill to set aside the transfer of stock of the corporation made for the purpose of forming a monopoly, which bill showed no collusion and the futility of any demand upon the officers of the corporation, was held sufficient. And in *Bigelow* v. *Calumet and Hecla Mining Co.*, 155 Fed 869, the court held that a stockholder of a corporation might maintain a suit to restrain another corporation which had obtained control of the first corporation's stock from voting the same for the purpose of electing its own directors and eliminating competition between the companies in alleged violation of law and irreparable injury to the complainant, without alleging any formal demand upon the directors. In *Delaware & Hudson Co.* v. *Alabama & Susquehanna Ry. Co.*, 213 U. S. 435, an allegation of demand upon the directors or stockholders of the corporation was held unnecessary where the bill showed that the directorate was antagonistic to the corporation's interests and controlled its stock.

Under the new equity rule the Supreme Court, in *Wathen* v. *Jackson Oil and Refining Co.*, 35 Sup. Ct. 225, held that to comply with the provision,—"or the reasons for not making such effort,"—the stockholder must allege reasons that are adequate, and that merely alleging that the directors and officers would comply with the statute through fear of its penalties was not sufficient where no demand was shown and where the corporation itself was entitled to protection against the imposition of such penalties as would virtually deny access to the courts for the protection of rights guaranteed by the constitution. In *Dana* v. *Morgan*, 219 Fed. 331, it was held that a stockholder's bill need not allege a formal demand for the corporation to act where the circumstances showed such request would have been unavailing.

It would thus seem that the new provision in rule 27 embraces the old exception recognized by the courts and does not extend much farther, in that the stockholder must practically show that any demand would have been futile, in order to show an adequate reason for his not making such effort.

A. M. R.